

CHAPTER NO. 389

SENATE BILL NO. 2255

By Kyle, Haynes, Burks

Substituted for: House Bill No. 2268

By McMillan, Marrero, Brown

AN ACT to amend Tennessee Code Annotated, Title 37, Chapter 1, relative to permanent guardianship for children adjudicated dependent and neglected, unruly or delinquent.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 37, Chapter 1, is amended by adding the following as a new part:

Section ____.

(a) The juvenile courts of Tennessee are empowered to appoint an individual a permanent guardian provided that the individual qualifies under the sections under this part. The juvenile court may establish a permanent guardianship at a permanency planning hearing or at any other hearing in which a permanent legal disposition of the child can be made, including a child protection proceeding or a delinquency proceeding.

Section ____.

(a) The court may consider any adult, including a relative, foster parent, or another adult with a significant relationship with the child as a permanent guardian. If the child is in the department's custody, the court shall seek the department's opinion on both the proposed permanent guardianship and the proposed permanent guardian. An agency or institution may not be a permanent guardian.

(b) The court may issue a permanent guardianship order only if the court finds that:

(1) The child has been previously adjudicated dependent and neglected, unruly or delinquent;

(2) The child has been living with the proposed permanent guardian for at least six months;

(3) The permanent guardianship is in the child's best interests;

(4) Reunification of the parent and child is not in the child's best interests; and

(5) The proposed permanent guardian:

(A) Is emotionally, mentally, physically and financially suitable to become the permanent guardian;

(B) Is suitable and able to provide a safe and permanent home for the child;

(C) Has expressly committed to remain the permanent guardian for the duration of the child's minority;

(D) Has expressly demonstrated a clear understanding of the financial implications of becoming a permanent guardian including an understanding of any potential resulting loss of state or federal benefits or other assistance; and

(E) Will comply with all terms of any court order to provide the child's parent with visitation, contact or information.

(c) In determining whether it is in the child's best interests that a permanent guardian be designated, in addition to any other evidence the court finds relevant, the court shall consider each of the following factors:

(1) The child's need for continuity of care and caregivers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;

(3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caregivers, including the proposed permanent guardian;

(d) Appointment of a permanent guardian under this part is not limited to children in the custody of the department.

(e) If the child is 12 years of age or older, the court shall consider the reasonable preference of the child. The court may hear the preference of a younger child. The preferences of older children should normally be given greater weight than those of younger children.

(f) The parent may voluntarily consent to the permanent guardianship, and shall demonstrate an understanding of the implications and obligations of such consent prior to the court entering an order establishing a permanent guardianship in accordance with the provisions of this part.

Section ____.

(a) Entry of a permanent guardianship order does not terminate the parent and child relationship, including:

(1) The right of the child to inherit from his or her parents;

(2) The parents' right to visit or contact the child (as defined by the court);

(3) The parents' right to consent to the child's adoption;

(4) The parents' responsibility to provide financial, medical, and other support for the child.

(b) The permanent guardianship order shall specify the frequency and nature of visitation or contact or information with relatives and the child. The court shall issue an order regarding visitation, contact and the sharing of information based on the best interests of the child. The order may restrict or prohibit visitation, contact and the sharing of information. The order may incorporate an agreement reached among the parties.

(1) Upon a showing by affidavit of immediate harm to the child, the court may temporarily stay, for a maximum of thirty (30) days, the order of visitation or contact on an ex parte basis until a hearing can be held. A modification of an order of visitation or contact shall be based upon a finding by a preponderance of evidence that there has been a substantial change in the material circumstances, and that the proposed modification is in the best interest of the child.

(2) Nothing in this part shall prevent removal of the child by the department from the permanent guardian based upon allegations of abuse or neglect pursuant to T.C.A. 37-1-128 and 37-1-113.

Section ____.

(a) The permanent guardian shall maintain physical custody of the child and shall have the following rights and responsibilities concerning the child:

- (1) To protect, nurture, discipline, and educate the child;
- (2) To provide food, clothing, shelter, and education as required by law, and necessary health care (including medical, dental and mental health) for the child;
- (3) Consent to health care without liability by reason of the consent for injury to the child resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances;
- (4) Authorize a release of health care and educational information;
- (5) Authorize a release of information when consent of a parent is required by law, regulation, or policy;
- (6) Consent to social and school activities of the child;
- (7) Consent to military enlistment or marriage;
- (8) Obtain representation for the child in legal actions; and
- (9) Determine the nature and extent of the child's contact with other persons.
- (10) Make decisions regarding travel.
- (11) Management of the child's income and assets.

(b) The permanent guardian is not liable to third persons by reason of the relationship for acts of the child.

Section __. The court shall retain jurisdiction to enforce, modify, or terminate a permanent guardianship order until the child reaches 18 years of age, or the age of 19 for children adjudicated delinquent.

Section __.

(a) A modification or termination of the permanent guardianship may be requested by the permanent guardian, if the child is age 16 or older, the parent, or by the state. A modification or termination may also be ordered by the juvenile court on its own initiative.

(b) Where the permanent guardianship is terminated by the juvenile court order, the court shall make further provisions for the permanent guardianship or custody of the child based upon the best interests of the child.

(c) An order for modification or termination of the permanent guardianship shall be based on a finding by a preponderance of the evidence that there has been a substantial change in material circumstances or a determination by the court that one or more findings required by section (1) of this bill no longer can be supported by the evidence. In determining whether there has been a substantial change in circumstances the court may consider whether the child's parent is currently able and willing to care for the child or that the permanent guardian is unable to continue to care for the child.

(d) In addition, prior to issuing an order modifying or terminating the order of permanent guardianship, the court must also find that the proposed modification or termination is in the best interests of the child. In determining whether it is in the child's best interest that the permanent guardianship be modified or terminated, the court shall consider, along with other evidence determined to be relevant, the following factors:

- (1) The child's need for continuity of care and caregivers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;

(2) The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;

(3) The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caregivers, including the proposed permanent guardian;

(4) Prior to modifying or terminating the permanent guardianship order to return the child to the parent, the court must consider whether there has been resolution of the factors in the home which resulted in the adjudication of the child as dependent and neglected, unruly, or delinquent. Where there has been involvement of the family with the department, this may include the parent's history of participation in working toward completion of the permanency plan.

(d) In the event that it is necessary to appoint a successor permanent guardian, appropriate parties may be considered by the court with the parent having no greater priority than a third party. The court may also consider, where appropriate, return of custody to the parent.

Section ____.

(a) Nothing under this subchapter shall preclude the permanent guardian from receiving money paid for the child's support to the child's parent under the terms of any statutory benefit or insurance system or any private contract, settlement, agreement, court order, devise, trust, conservatorship, or custodianship, and money or property of the child.

(b) In the event the income and assets of the parent qualify the child for government benefits, the benefits may be conferred upon the child with the payment to be made to the permanent guardian. The provision of necessities by the permanent guardian shall not disqualify the child for any benefit or entitlement.


(c) The court may order and decree that the parent or other legally obligated person shall pay, in such manner as the court may direct, a reasonable sum that will cover in whole or in part the support and medical treatment of the child after the permanent guardianship order is entered. If the parent or other legally obligated person willfully fails or refuses to pay such sum, the court may proceed against that person for contempt, or may file the order, which shall have the effect of a civil judgment.

(d) If applicable, in the order the court shall provide how the child should be claimed as a dependent for the federal income tax purposes.

SECTION 2. This act shall take effect July 1, 2005, the public welfare requiring it.

PASSED: May 25, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 9th day of June 2005


PHIL BREDESEN, GOVERNOR